

E-FILED on 7/2/08

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MOBASSA BOYD,

Petitioner,

v.

ANTHONY NEWLAND,

Respondent.

No. C-00-21287 RMW

ORDER DIRECTING RESPONSE TO
PETITIONER'S RENEWED *BATSON* CLAIM

[Re Docket No. 51]

Petitioner originally filed a petition for writ of habeas corpus in this court in December 2000. In August 2003, the court denied the petition, which included a claim of racial discrimination in jury selection in violation of *Batson v. Kentucky*, 476 U.S. 79 (1986). One of the issues was the State's failure to provide to petitioner a complete voir dire transcript. Instead, the State provided a partial transcript that addressed only the peremptory strike of the juror that petitioner claims was discriminatorily challenged based upon race.


Petitioner appealed this court's denial to the Ninth Circuit, which issued three panel opinions in total. The first panel opinion, *Boyd v. Newland*, 393 F.3d 1008 (9th Cir. 2004), upheld this court's ruling, determining in relevant part that the California appellate court's decision to deny petitioner's requests for a transcript of entire voir dire free of charge so that he could prepare his *Batson* claim was not an unreasonable application of clearly established federal law. *Id.* at 1016.

1 In June 2006, the Ninth Circuit issued an amending and superceding opinion on denial of
2 petitioner's request for rehearing. *Boyd v. Newland*, 455 F.3d 897 (9th Cir. 2006). The June 2006
3 opinion concluded – based in part on Supreme Court cases clarifying *Batson* that issued after the
4 Ninth Circuit's original opinion – that the analysis in the original Ninth Circuit opinion was flawed
5 with respect to the California court's conclusion regarding the provision of a complete voir dire
6 transcript. The Ninth Circuit held that the California courts had violated clearly established law by
7 denying petitioner's habeas petition "because, without the entire voir dire transcript, those courts
8 could not evaluate the relevant circumstances surrounding the contested strike, as *Batson* requires."
9 *Id.* at 900. The court stated that "when a defendant raises a plausible *Batson* claim, a court must
10 analyze the context in which the contested peremptory strike rose" and held that petitioner here had
11 raised at least a plausible *Batson* claim for which a contextual analysis was appropriate. *Id.* at 904.
12 The court reversed and remanded this court's decision in part, with instructions to grant the petition
13 for habeas corpus with respect to the *Batson* claim. *Id.* at 1010. In October 2006, the Ninth Circuit
14 denied a further petition for rehearing, but again amended its opinion, in relevant part changing the
15 instruction to this court on remand. *Boyd v. Newland*, 467 F.3d 1139, 1141, 1152 (9th Cir. 2006).
16 The amended opinion instructed this court to enter a conditional writ of habeas corpus ordering
17 petitioner's release unless the State provides without charge a complete voir dire transcript and
18 permitted petitioner to renew his *Batson* claim in this court. *Id.*; *see also id.* at 1142, 1146-47. The
19 substance of the Ninth Circuit's June 2006 opinion was not significantly changed by the October
20 2006 amendments.

21 The Ninth Circuit's mandate was stayed pending the State's petition for writ of certiorari
22 before the Supreme Court. After the Ninth Circuit issued its mandate following the Supreme Court's
23 denial of review, the State provided a complete copy of the voir dire transcript. Petitioner's counsel
24 obtained on May 27, 2008 yet further documents regarding the voir dire, specifically, state trial
25 counsel's written notes on the voir dire. *See* Decl. Mark Eibert in Supp. Renewed *Batson* Claim ¶ 3,
26 Ex. 2. On May 30, 2008, after receiving these additional documents, petitioner filed his renewed
27 *Batson* claim.
28

1 As set forth in the Ninth Circuit's amended petition, this court is required to consider
2 petitioner's renewed *Batson* claim on the full voir dire record, which has now been submitted by
3 petitioner. Docket Nos. 52, 53. Respondent is directed to file an opposition to petitioner's renewed
4 *Batson* claim within 45 days of receipt of this order. Petitioner may file a reply within 20 days of
5 the filing of the opposition.

6
7
8 DATED: 7/1/08


RONALD M. WHYTE
United States District Judge

United States District Court
For the Northern District of California

1 Notice of this document has been electronically sent to:

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7 Counsel are responsible for distributing copies of this document to co-counsel that have not
8 registered for e-filing under the court's CM/ECF program.

9
10 Dated: 7/2/08

/s/ MAG
Chambers of Judge Whyte